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UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

IN RE: THE FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO,

PROMESA  
TITLE III

as representative of

THE COMMONWEALTH OF  
PUERTO RICO, et al. (Jointly Administered)  
Debtors.

Omnibus Hearing  
January 30, 2019  
9:15 A.M.

Before:

HON. LAURA TAYLOR SWAIN,

District Judge

### Also Present:

Hon. Magistrate Judge Judith Gail Dein

## APPEARANCES

PROSKAUER ROSE LLP  
Attorneys for FOMB Oversight Board  
BY: MARGARET DALE  
MAJA ZERJAL  
LAURA STAFFORD

PAUL HASTINGS LLP  
Attorneys for Official Committee of Unsecured Creditors  
and its capacity as Commonwealth Agent  
BY: LUC A. DESPINS  
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Attorneys for Ad Hoc Group of General Obligation  
Bondholders

BY: DONALD BURKE  
MARK T. STANCIL

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1 APPEARANCES

2 (Continued)

3 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
4 Attorneys for GO Group  
BY: ANDREW ROSENBERG

5 DAVIS POLK & WARDWELL LLP  
6 Attorneys for GO Group  
BY: DONALD BERNSTEIN

7 O'MELVENY & MYERS LLP  
8 Attorneys for Movant AAFAF  
BY: PETER FRIEDMAN

9 REED SMITH LLP  
10 Attorneys for The Bank of New York Mellon  
BY: LUKE SIZEMORE

11 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
12 Attorneys for COFINA Senior Bondholders  
BY: SUSHEEL KIRPALANI

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14 Attorneys for Ambac Assurance Corp.  
BY: ATARA MILLER

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16 Attorneys for Bettina M. Whyte (COFINA Agent)  
BY: ANTONIO YANEZ, JR.

17 MORRISON & FOERSTER LLP  
18 Attorneys for Ad Hoc Group  
BY: JAMES M. PECK

19 LATHAM & WATKINS LLP  
20 Attorneys for Autonomy Capital LP  
BY: CHRISTOPHER HARRIS

21 LUSKIN, STERN & EISLER LLP  
22 Attorneys for FOMB for Puerto Rico  
BY: MICHAEL LUSKIN

23 GODFREY & KAHN, S.C.  
24 Attorneys for The Fee Examiner  
25 BY: KATHERINE STADLER

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1 APPEARANCES  
2 (Continued)

3 CADWALADER, WICKERSHAM & TAFT LLP  
4 Attorneys for Assured Guaranty Corp. and Assured Municipal  
Corp.

5 BY: MARK ELLENBERG

6 PETER HEIN  
7 Pro Se

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1 (Case called)

2 THE COURT: Again, buenos dias. Good morning.

3 Welcome counsel, parties in interest, members of the public and  
4 press here in New York, those observing here and in San Juan,  
5 and telephonic participants.

6 I remind you -- this is my usual speech -- consistent  
7 with the Court and Judicial Conference policies and the orders  
8 that have been issued, there is to be no use of any electronic  
9 devices in the courtroom to communicate with any person,  
10 source, or outside repository of information, nor to record any  
11 part of the proceedings. So all electronic devices must be  
12 turned off unless you're using the particular device to take  
13 notes or to refer to notes or documents already loaded on the  
14 device.

15 All audible signals, including vibration features,  
16 must be turned off, and no recording or re-transmission of the  
17 hearing is permitted by any person, including, but not limited  
18 to, the parties or the press. Anyone who is observed or  
19 otherwise found to have been texting, emailing, or otherwise  
20 communicating with a device from a courtroom during the court  
21 proceeding will be subject to sanctions, including, but not  
22 limited to, confiscation of the device and denial of future  
23 requests to bring devices into the courtroom.

24 And I thank you all for your continued respect of  
25 these rules and cooperation with them.

1                   Our first order of business is the status report from  
2 the Oversight Board.

3                   MS. ZERJAL: Good morning, your Honor.

4                   Maja Zerjal of Proskauer Rose on behalf of the  
5 Oversight Board for itself and as Title III representative of  
6 the debtors.

7                   THE COURT: Good morning. Ms. Zerjal?

8                   MS. ZERJAL: That's right.

9                   THE COURT: It is good to see you and your colleagues  
10 here to speak at the omnibus hearing.

11                  MS. ZERJAL: Thank you very much.

12                  Your Honor, I will provide a status update on the  
13 plans of adjustment, and I would then like to turn it over to  
14 Mr. Luskin to provide a report on the McKinsey investigation.

15                  THE COURT: Very well.

16                  MS. ZERJAL: As your Honor is aware, two weeks ago  
17 there was a hearing on the COFINA plan of adjustment and the  
18 9019 motion on the COFINA Commonwealth dispute.

19                  Since then, as the Court ordered, we filed  
20 supplemental briefing on the findings of fact and conclusions  
21 of law as well as the proposed order. We also filed a reply to  
22 the amicus brief filed by the Popular Democratic Party of the  
23 Senate of Puerto Rico. This Monday we filed a second amended  
24 plan supplement, and the notice of submission provided that the  
25 documents submitted therein are going to be executed on the

1 effective date assuming the plan is confirmed. At the same  
2 time we are also continuing with the claims administration  
3 process, some of which is addressed in the agenda later today.

4 Moving on to PREPA, we are continuing negotiations on  
5 a restructuring support agreement with a significant portion of  
6 PREPA uninsured bondholders who represent approximately  
7 3.2 billion of the approximately 8.3 billion of PREPA bond  
8 debt. In parallel, the Oversight Board, AAFAF, and the  
9 Puerto Rico P3 Authority are working collaboratively to  
10 accomplish a transformation of the transmission and  
11 distribution systems of PREPA that will include the transfer of  
12 operations to a private investor under a long-term concession  
13 agreement.

14 We updated the Court on that previously but just to  
15 give another update, in October the P3 Authority issued a  
16 request for qualifications, and as a result of that, four  
17 parties turned out to be qualified. We understand that in the  
18 near term the P3 Authority will issue a request for proposals  
19 to those four parties and then diligence will commence.

20 THE COURT: Is there a particular focus in terms of  
21 renewables, fossil fuels, the type of structure, or the  
22 different parties representing different options for  
23 strategies?

24 MS. ZERJAL: Your Honor, I would have to check on  
25 that, and we're happy to update the Court on that.

1                   THE COURT: I would be grateful for a supplemental  
2 filing that everyone can see.

3                   MS. ZERJAL: Absolutely. Thank you.

4                   I was just going to say that we expect at this time  
5 that the winning bidder will be selected in the third quarter  
6 of 2019.

7                   As for the operations and cash position at PREPA, they  
8 are stable at this time, and absent any unforeseen  
9 circumstances, which we know are a little unpredictable in this  
10 case, we do not expect to need any additional post position  
11 financing.

12                  As for the Commonwealth, there have been significant  
13 one-on-one discussions with certain parties, and the board is  
14 looking forward to resuming negotiations on a Commonwealth plan  
15 of adjustment. In terms of timing, it would really depend on  
16 the progress, or actually lack thereof, in February and March.  
17 As we noted to your Honor in December, we may ask the Court to  
18 resolve certain legal differences among the parties that would  
19 remove at least those obstacles to negotiation and hopefully a  
20 resolution.

21                  Since then, the Board and the Official Committee of  
22 Unsecured Creditors filed an adversarial complaint seeking  
23 declarations that the PBA leases are not true leases for  
24 purposes of Bankruptcy Code, Section 365(d)(3).

25                  The Board and the UCC also filed a claim objection

1 seeking to disallow all claims arising from GO bonds issued on  
2 or after March 2012 on the basis that such bonds were issued in  
3 violation of the Commonwealth Constitution's debt limit, some  
4 of which will be touched upon later today.

5 If it proves beneficial to further negotiations, more  
6 issues may be presented to the Court to help further narrow the  
7 legal differences among the parties.

8 Your Honor, there are no other material updates. And  
9 unless your Honor has any questions, I'm happy to turn it over  
10 to Mr. Luskin.

11 THE COURT: So when you speak of assessing progress in  
12 early February, is that in relation to some anticipated  
13 discussions or is that a continuation of the one-on-one and  
14 legal analytical challenge activity you've mentioned?

15 MS. ZERJAL: Your Honor, we're expecting the mediation  
16 to continue. As you know, those conversations are very  
17 sensitive.

18 THE COURT: Yes.

19 MS. ZERJAL: But we do expect material progress in  
20 terms of at least conversations with parties.

21 THE COURT: Thank you.

22 MS. ZERJAL: Thank you very much.

23 MR. LUSKIN: Good morning, your Honor. Michael  
24 Luskin, Luskin stern & Eisler for the Board.

25 THE COURT: Good morning, Mr. Luskin.

1                   MR. LUSKIN: I will give a very brief report on the  
2 status of our investigation and report on the McKinsey matter.

3                   The report and investigation are in their final  
4 stages. We've completed all interviews, all document review.  
5 There's some follow-up, as you would expect. A near final  
6 draft is being reviewed by the Board this week, and we plan to  
7 file it -- we will file our report by February 18. The plan is  
8 to both post it on the Board's website, and with your Honor's  
9 consent, we would file an informative motion so it's on the  
10 docket and available to parties in interest who've signed onto  
11 pacer.

12                  THE COURT: I not only consent. I request that you do  
13 so.

14                  MR. LUSKIN: Thank you, and we're happy to do that.  
15                  As to what happens after we file it, whether you'll  
16 want to engage me in any sense with questions or anything like  
17 that, I leave it to the Court. The plan now is just to file  
18 it. It does contain recommendations for the Board, and I'm  
19 sure the Board will be taking further action following the  
20 completion of the report.

21                  But unless your Honor has questions, that is my  
22 report, and I'd request that I can be excused from the rest of  
23 the hearing. I have no part in it.

24                  THE COURT: All right. Well, I thank you for the  
25 report. I will look forward to seeing what you file in

1 mid-February and then, as you say, if you're making  
2 recommendations for the Board and depending on the other  
3 content of the report, I'd ask that you don't make any  
4 immediate plans to be in Antarctica in mid-March when we have  
5 the first omni, but we will reach out to you agenda-wise.

6 MR. LUSKIN: I'm available whenever you need me.  
7 Thank you, your Honor.

8 THE COURT: Thank you, Mr. Luskin.

9 The next agenda items are the examiner-related  
10 matters. And so Ms. Stadler.

11 MS. STADLER: Good morning, your Honor.

12 THE COURT: Good morning.

13 MS. STADLER: Katherine Stadler of Godfrey & Kahn.  
14 Brady Williamson, Fee Examiner, is here in the courtroom with  
15 me as well.

16 Judge, we filed last week a brief report on our  
17 status. As you know from that report, we have three interim  
18 applications that we're recommending for the Court's approval  
19 today. Two of them are for the third interim fee period, and  
20 one of them is for the first and second interim fee periods.

21 Those applications have been subject to our process  
22 and negotiation with the professionals. Agreements have been  
23 reached on adjustments to compensation where appropriate, and  
24 the amounts of those adjustments and the final recommendations  
25 are contained in the exhibit to our report.

1           If you have questions, your Honor, about any of the  
2 applications, I'm happy to field them. Otherwise, we recommend  
3 their approval today and will submit an order as soon after  
4 this hearing as possible.

5           THE COURT: Thank you. I have reviewed the filed  
6 information, and I have no further questions. And so the  
7 application is granted as to the recommended approvals, and I  
8 will look forward to your proposed order.

9           MS. STADLER: OK. Thank you.

10          Our counsel in Puerto Rico, who I see on the screen  
11 there, will submit that order shortly as soon as he gets back  
12 to his office I'm told.

13          THE COURT: Thank you.

14          MS. STADLER: I wanted to provide the Court with a  
15 brief status on the fee application process as a whole.

16          We are in the process of reporting on fourth interim  
17 fee period applications. Those, as you know, cover June  
18 through September of 2018. Professionals have begun receiving  
19 reports, and we are in discussions with many of them. We  
20 expect to have a group of fourth interim fee applications as  
21 well as many of the held-over third interim fee applications  
22 ready for the Court's approval in connection with the March  
23 omnibus hearing.

24          The Fee Examiner asked me to address briefly the tax  
25 issue, which, as everyone in the room knows, is causing quite a

1 bit of head scratching. We as Fee Examiner's counsel are  
2 receiving many inquiries from professionals as to what to do,  
3 and while we don't wish to put ourselves at the center of the  
4 discussions, we do have a lot of inquiries coming in, so that  
5 the Fee Examiner asked me to let your Honor know that we have  
6 been gathering information from AAFAF and the Oversight Board  
7 and their respective counsel. We have been hearing from  
8 individual professionals.

9           Perhaps not surprisingly, smaller firms, smaller  
10 non-Puerto Rican firms, are expressing the most concern because  
11 the tax withholding has a potential to have a significant  
12 impact on cash flow for those smaller firms. Larger firms are  
13 also concerned, but many of them have obtained tax advice or  
14 are in the process of obtaining tax advice and are at least  
15 coming up with a plan for how to deal with the withholding.

16           What we do know is that starting with January  
17 invoices, Hacienda has told us that it intends to begin  
18 withholding the tax from all outgoing payments to  
19 non-Puerto Rico professionals at the rate of 29 percent.

20           I've learned from the Oversight Board general counsel  
21 just this morning that there is a lower tax rate applicable to  
22 professionals who meet certain criteria. One would be having a  
23 physical presence in Puerto Rico. The other would be filing  
24 Puerto Rico can tax returns. Obviously tax returns for 2018  
25 won't be filed before January payments need to start being

1 made, and I am told that until a professional has established  
2 they're entitled to a lower withholding rate, the withholding  
3 will be done at the rate of 29 percent.

4           What I can tell professionals right now is the same  
5 thing that we have stated in our written communications to them  
6 and in our informal telephone communications with many of them,  
7 which is that we cannot provide individual firms with tax  
8 advice -- whether it's what rate will apply, whether they're  
9 entitled to a credit at some point or any other tax issue --  
10 but what we can say is that for purposes of the fee review  
11 process, to the extent that a professional deems it necessary  
12 to make an adjustment to an invoice because of the tax  
13 withholding, that that should be accounted for and itemized  
14 separately and below the line, so to speak.

15           They should not be adjusting hourly rates. They  
16 should not be making changes to any pre-agreed discounts.  
17 Their invoices should be run as they always have been. And any  
18 adjustments that they deem appropriate need to be clearly  
19 delineated as related to the tax withholding so that if at a  
20 future point there is a reconciliation that needs to take  
21 place, that can be done -- I don't want to say simply, but more  
22 simply than if the tax issue is incorporated into the billing  
23 structure.

24           So we encourage professionals who want to discuss any  
25 of that to contact us, but we also encourage the Oversight

1 Board and AAFAF to continue providing us with information. My  
2 understanding, and AAFAF representatives can probably comment  
3 on this, is that there are regulations being promulgated that  
4 may address some of the questions regarding withholding rates,  
5 and so we are awaiting with interest those regulations and any  
6 guidance that we get from either Hacienda, AAFAF, or the  
7 Oversight Board

8 THE COURT: Do you have an understanding as to whether  
9 this withholding is a -- I'll say a true withholding in  
10 anticipation of further computations of some actual tax  
11 liability or whether it's, in essence, a 29 percent flat tax  
12 that's not intended to be given back.

13 MS. STADLER: With a very big caveat that I don't have  
14 the authority to speak definitively, my understanding is that  
15 there is a tax liability associated with it, and the  
16 withholding is keyed to what the tax liability would be.  
17 Whether there are adjustments, credits, lower rates that might  
18 retroactively apply upon the filing of a tax return, that  
19 remains to be seen. But as I understand it, it is withholding  
20 of a tax that is expected to be levied. It is not just a  
21 temporary hold.

22 THE COURT: Thank you. And perhaps if any of the  
23 AAFAF representatives have information they would like to  
24 share. I'm told not. All right. Thank you, Mr. Friedman.

25 Ms. Stadler.

1 MS. STADLER: With that, Judge, unless you have  
2 additional questions about the report, the fee review process,  
3 or any other matters within the Fee Examiner's purview, I've  
4 completed my statements.

5 THE COURT: Thank you.

6 Is Mr. Williamson also going to speak or should I just  
7 ask you?

8 MS. STADLER: I don't believe he plans to. He can if  
9 your Honor would like to hear from him.

10 THE COURT: Not necessarily. It's always an honor,  
11 but my only request is that you confirm what you said in your  
12 written statement, which is that discussions are ongoing  
13 concerning the requests and suggestions that I made regarding  
14 the adjustments of proposed protocols.

15 MS. STADLER: Yes. We are working diligently on that.  
16 As your Honor may imagine, there was a lot of concern  
17 articulated to us after the December hearing. Between  
18 intervening holidays and the flurry of activities surrounding  
19 the COFINA confirmation process and 9019 process, many  
20 professionals simply wanted and asked to defer discussions and  
21 more detailed discussions on that issue, and we have honored  
22 that request.

23 We have had many conversations with professionals,  
24 with the Oversight Board, with AAFAF. We are getting input,  
25 and we plan to circulate a new proposed order that incorporates

1 all of that input and hopefully addresses some of the  
2 professionals' concerns.

3 Within the next couple of weeks, we plan to submit  
4 that proposed order to the Court, whether it's contested or  
5 not, hopefully not, for discussion and potential Court approval  
6 in connection with the March omnibus hearing.

7 THE COURT: Thank you, Ms. Stadler.

8 MS. STADLER: Thank you.

9 THE COURT: The next group of items on the agenda are  
10 matters that are on presentment, the first being the  
11 stipulation and agreed order on COFINA proofs of claim of the  
12 Senior Bondholders Coalition.

13 Ms. Stafford.

14 MS. STAFFORD: Good morning, your Honor. Laura  
15 Stafford on behalf of the Oversight Board.

16 I'm here to present for approval a stipulation and  
17 agreed order between the Oversight Board and the COFINA Senior  
18 Bondholders Coalition. The stipulation seeks to withdraw  
19 certain proofs of claim by members of the Coalition in respect  
20 of COFINA bonds.

21 And I just want to note for the record that the  
22 original stipulation that was filed on the public docket  
23 included a placeholder for one of the proof of claim numbers,  
24 and subsequently counsel for the Coalition identified the proof  
25 of claim number and so we submitted to the Court earlier this

1 week a revised stipulation that replaced the placeholder with a  
2 new proof of claim number. No material changes were made to  
3 the stipulation as it was filed on the record.

4 The response and objection deadline was yesterday. No  
5 responses or objections were filed, and so we'd request the  
6 Court enter the parties' stipulation and agreed order  
7 withdrawing these claims.

8 THE COURT: So for clarity, what you're asking me to  
9 enter is a version of docket entry 4875-1 that was filed in the  
10 3283 case with the blank filled in?

11 MS. STAFFORD: That's correct.

12 THE COURT: You've emailed it to us in Word form?

13 MS. STAFFORD: That's correct, your Honor.

14 THE COURT: No objections having been filed, the  
15 stipulation will be approved and entered as discussed.

16 MS. STAFFORD: Thank you, your Honor.

17 The next item on the agenda are four of the omnibus  
18 claim objections which were filed in early December. I will  
19 just briefly address the ones that are outstanding. The first  
20 objection seeks to disallow four proofs of claim that were  
21 amended and superseded by subsequently filed claims.

22 The second seeks to disallow 16 proofs of claim that  
23 assert the exact same liability as subsequently filed claims.

24 The third omnibus objection seeks to disallow five  
25 proofs of claim that are exact duplicates of proofs of claim

1 filed against other debtors.

2 And the fifth seeks to reclassify 284 proofs of claim  
3 that were filed against the incorrect debtor.

4 Each party whose claim was subject to one of these  
5 omnibus objections received a notice in both English and  
6 Spanish informing them of the response deadlines, and no  
7 responses were filed as to either of these four --

8 THE COURT: As to any of the four?

9 MS. STAFFORD: As to any of the four.

10 Because no responses were filed, the Court may grant  
11 these omnibus objections without further notice or hearing, and  
12 so we'd request that the Court enter an order granting the  
13 first, second, and third omnibus objections and disallowing the  
14 claims pursuant to those objections, and granting the fifth  
15 omnibus objection and reclassifying those claims.

16 THE COURT: Thank you for that overview.

17 No responses to the objections having been filed, the  
18 Court will enter orders granting the objections, and so the  
19 proposed order with respect to the first omnibus objection is  
20 docket entry 4405-5 in the 3283 case.

21 The order with respect to the second omnibus objection  
22 is docket entry 4406-5 in the 3283 case.

23 The order with respect to the third omnibus objection  
24 is docket entry 4407-5 in the 3283 case.

25 And the proposed order with respect to the fifth

1 omnibus objection is docket entry number 4409-5 in the 3283  
2 case. And the Court will enter those proposed orders.

3 Thank you, Ms. Stafford.

4 MS. STAFFORD: Thank you so much.

5 I will turn it over to the next item on the agenda.

6 THE COURT: Thank you.

7 The next agenda item is the one contested matter,  
8 which is the urgent motion of the Oversight Board and the  
9 Unsecured Creditors Committee to establish procedures regarding  
10 the omnibus objection to claims of certain GO bondholders that  
11 was alluded to earlier. And I understand that Mr. Despins is  
12 going to be the opening speaker.

13 MR. DESPINS: Yes, your Honor.

14 Good morning, your Honor.

15 THE COURT: Good morning.

16 MR. DESPINS: I am Luc Despins from Paul Hastings on  
17 behalf of the Official Creditors Committee, one of the  
18 co-objectors to certain GO proofs of claims.

19 Your Honor, I want to give the Court a little bit of  
20 background. As you know, we filed the objection to over  
21 \$6 billion of GO claims on January 14. That was 16 days ago.  
22 At that point we had sort of a fundamental choice, which is do  
23 we object only to what I will refer in this proceeding as the  
24 big holders, the ones that have hundreds of millions of dollars  
25 and sometimes a billion dollars of these bonds, or do we set up

1 or attempt to set up a process so that everyone can be involved  
2 if they want to.

3 And although we believe we have the absolute right to  
4 file an objection just to the big holders who have filed proofs  
5 of claims, we decided to try to set up a procedure so that  
6 everyone could be involved if they want to because we believe  
7 probably that the Court doesn't want to do this twice or  
8 certainly wouldn't want -- because there would be practically a  
9 preclusive effect in the sense that if you have a full-blown  
10 trial with the big holders and us and you find one way or  
11 another, that's likely to be binding on others practically.

12 So we decided to design a process to try to address  
13 this, and the way we did that is by making sure that no  
14 substantive deadlines of any kind, no discovery, no response on  
15 the merits, none of that would be running while we attempt to  
16 set up this procedure that we're here to discuss today.

17 And we wouldn't come back to the Court until we gather  
18 information from the holders that I will describe in a second,  
19 and only at that time would the Court not entertain the merits  
20 of the objection at all but say, OK, I've listened to this. I  
21 think this is the way we should litigate this matter.

22 And I was struck last night in preparing for this that  
23 that date, your Honor, would not occur, meaning the first date  
24 where you might consider what I call the shape of the table and  
25 who is sitting where, that wouldn't happen under our procedures

1 as modified until at the earliest April 20. That means that  
2 practically the actual hearing on the merits would not take  
3 place for some time thereafter that, and we know that -- we  
4 expect they'll ask for discovery, etc., etc. So we're talking  
5 about the hearing on the objection itself not taking place for  
6 months.

7 And the reason I'm emphasizing this is because the  
8 rule focuses on notice of the hearing on the objection. So we  
9 are under -- what we're proposing, your Honor, giving holders  
10 multiples and multiples of the notice that is required under  
11 the rules because the rule only requires 30 days. And by the  
12 way, we're not naïve, we know you wouldn't be trying something  
13 like that in 30 days' notice, but the point is from a due  
14 process point of view, we're giving all the holders much, much  
15 more notice than they would normally have.

16 THE COURT: One of the concerns that I perceive is  
17 about the gatekeeping element of your proposal now is that it  
18 does require not a substantive objection but some action now  
19 that as written would seemingly preclude, at least under  
20 certain circumstances, later substantive participation if there  
21 isn't action within a short time frame.

22 MR. DESPINS: Yes. So, first we've addressed that in  
23 several ways. The first one is we've divided in our revised  
24 procedures, we've divided the world into what we've called the  
25 big holders. It's easy. It's the people who filed an

1 objection. They have billions of dollars collectively in  
2 claims. And the rest of the world.

3 So the big holders would be those folks and the people  
4 who have a claim for more than \$10 million, fairly large, and  
5 the rest of the folks would get more time, and we would also  
6 dispense those other folks, meaning -- I don't want to be  
7 demeaning when I say this, but the smaller holders, holders of  
8 less than \$10 million, they would have more time and also this  
9 isn't new, your Honor, they would not have to file a statement  
10 of position, etc., etc., because the purpose of that statement  
11 of position is to help us devise a procedure to try this. And  
12 they're saying, no, you're seeking pretrial discovery and all  
13 of that. That's not the point.

14 The point of this is to know what defenses they're  
15 going to raise so we know how to sequence this trial, and we  
16 don't need that from the smaller holders because we're assured  
17 that the big holders will cover the field in spades on that.  
18 So from the point of view of a small holder, they only have to  
19 file something that says, hey, I'm here, I want to participate.  
20 I'm owed \$5 million in bonds. I purchased those on that date,  
21 and this is the CUSIP number that I hold. Minimal, minimal  
22 requirement. And they have 50 days to do that, your Honor.

23 On top of that, we've added another safety valve, your  
24 Honor, which is if they fail to comply with that, they can  
25 still jump on the train later as long as they do that 30 days

1 before the trial. So from their point of view of the small  
2 holders, they're getting lots of notice. The gatekeeping is  
3 minimal. Just say raise your hand, how much you're owed, when  
4 did you purchase your bonds. That's it.

5 Big holders have to say the same thing;-- meaning, the  
6 holdings that they have on a confidential basis to us, but they  
7 also have to file a five pager. And we've told them you don't  
8 need to cite cases. It can be bullet points. We just want to  
9 know -- I'll give you an example. Will they argue that the  
10 Oversight Board is barred from raising this issue. We need to  
11 know if that's a defense or not. We need to know who is  
12 raising the defense because under the UCC there may be  
13 applicable rules. So it's a gatekeeping function.

14 From our point of view, your Honor, I don't think you  
15 would want us to try to have a pretrial order without having  
16 canvassed the issues first, and that's the purpose of that.  
17 Five pages is not burdensome. We say that's not binding. We  
18 can't use it later and, aha, you said X, Y, Z. Now you're  
19 saying the opposite. It's purely for the purpose of  
20 identifying the issues for trial, sequencing the issues for  
21 trial, and also hopefully having groups so we know who's doing  
22 what, who's arguing what. That's the sole purpose of that. We  
23 say that in the revised procedures.

24 It's not binding. It cannot be used by us at all.  
25 Therefore, the gatekeeping is really minimal. It's nonexistent

1 practically for the smaller holders, but for the big holders,  
2 these guys are well-heeled, and they can do that very easily.

3 THE COURT: I have just a quick question for you, and  
4 fair warning, at the end of your presentation, I'll probably  
5 have some more granular questions for you, which will be on my  
6 time clock and not yours.

7 But on this one, you have a provision in your proposed  
8 order and you've mentioned again today wanting acquisition date  
9 information. And that's one of the subjects of the objections.  
10 As I read your reply, you say that that requirement goes to  
11 distinguishing primary from secondary market holders.

12 At this stage, why wouldn't it be sufficient to simply  
13 have a yes or no answer to: Do your holdings include secondary  
14 market purchases or something along those lines?

15 MR. DESPINS: Because if the UCC applies -- we're  
16 saying in our objection that we don't believe the UCC can trump  
17 the Constitution. But putting that argument aside, if it does  
18 apply -- I'll give you a crazy example. If somebody bought  
19 some of these GO bonds yesterday, so that's clearly secondary  
20 market, but I need to know that they bought it yesterday  
21 because clearly they bought it on knowledge that there's a  
22 challenge, right, if they bought it yesterday. So it's key to  
23 that issue, your Honor, which is, when did they buy.

24 And, by the way, we're going to keep this  
25 confidential. There's no secret sauce that we're going to

1 reveal to the world. We just need it so we understand who is  
2 in what bucket from that point of view. Because we believe  
3 that this challenge existed years ago. We mention that in the  
4 objection. And, therefore, we need to know, not only if you're  
5 a secondary buyer or not, we need to know when you bought.

6 And there is no harm to them in the sense that we're  
7 going to keep it confidential. It's not going to be filed with  
8 the Court. We changed that. It's just provided to the Board  
9 and to us. We have to keep it confidential. There is no real  
10 detriment to them because it's used solely for the purpose of  
11 determining whether they were on knowledge or can argue they  
12 were on knowledge or not. And that's going to go to the shape  
13 of this trial, how is it going to be sequenced. So that's why  
14 that's important, your Honor.

15 As I said, the notice of participation is not binding.  
16 We've said that the small holders who miss the cutoff can still  
17 jump in after the fact if they do so 30 days before the trial,  
18 so that would be months from now. So let me address some of  
19 their arguments because I'm almost out of time.

20 The first one is that they say you should not be able  
21 to proceed without telling us all the objections you have to  
22 our claims. The point, your Honor, here we're saying their  
23 claims are not valid. It makes no sense to go into whether  
24 they're secured, priority or not, if the validity is not there.  
25 And these are separate issues. Whether they have a security

1 interest or they have priority has nothing do with validity.  
2 Nothing to do. So, therefore, there's no issue there in terms  
3 of duplication or anything like that.

4 The other point is they mentioned mediation, and we  
5 were very careful not to go into that because --

6 THE COURT: And I have no need for you to go into the  
7 substance or sequence of mediation.

8 MR. DESPINS: Thank you, because I thought those were  
9 off limits.

10 And, your Honor, I think at this point I would reserve  
11 for a reply, but I think you have some more granular questions  
12 for me.

13 THE COURT: Yes. Thank you.

14 One is with respect to the objection that you didn't  
15 consult anyone prior to filing this motion, and you say you  
16 weren't required to. There is a provision in the case  
17 management procedures that says all urgent motions be preceded  
18 by reasonable good faith communications in an effort to resolve  
19 or narrow. So did you do that, and if not --

20 MR. DESPINS: We're not saying that we did not need  
21 to. Two answers. We said that we did. So just so you know  
22 the facts. A full week before the petition was filed,  
23 Mr. Weisfelner, who is our co-counsel and special counsel to  
24 the claims committee of the Board, he's our co-counsel in this  
25 matter, and myself met with lawyers who have represented in

1       this case throughout Robbins Russell and Paul Weiss, the main  
2       players, and told them, hey, we are considering filing an  
3       objection. This is the basis, etc., etc. So first,  
4       discussion.

5              Second, I'm not going to go into the back and forth  
6       just to say they were fully on notice that this was happening.

7              THE COURT: The "this" being the omnibus objection as  
8       opposed to the initial procedures proposal?

9              MR. DESPINS: Correct.

10             Now, let's talk about the procedures motion. Before  
11       the filing, let's say, three, four hours before the filing, we  
12       had a call with the same folks to tell them, hey, we're filing  
13       the objection and also we are seeking entry of a procedures  
14       motion. And I proceeded to describe in detail what the  
15       procedure motions did and especially what it did not. And I  
16       said, if you have any questions on that, and the response  
17       that's in our motion. The motion to shorten says that, relates  
18       that conversation. And their response was: We have no client  
19       authority. We need to seek client authority to engage on this  
20       with you. And, second, we need to see the actual document  
21       before we can give comments. We said, OK, fine, but we're  
22       filing today because we need to file the motion because, as you  
23       know, your Honor, it's not that -- you know, emergency motions  
24       are kind of misnomers because there are true emergency motions  
25       where you're shortening the time, but you also have to file an

1 emergency motion every time you want to go off calendar.

2 So in our case we had the choice of having this motion  
3 heard in March because remember there is no February omnibus  
4 hearing. So the only way to get that done was to file that.  
5 But there was a meet-and-confer. Was it satisfactory to them?  
6 No, I'm not saying it was. And the way we addressed the  
7 emergency nature is to give them as much time. And actually  
8 later we gave them more time than they would have had if this  
9 motion had been filed on regular notice.

10 But the point we're also making is it's true that  
11 because we're shortening time of the hearing, not of their time  
12 to respond, we needed to meet and confer. But for that --  
13 let's put it this way: If we had filed this motion a week  
14 before, there would be no requirement at all of  
15 meet-and-confer. So it's not a nature of the bankruptcy rules  
16 that is the meet-and-confer. Under your court order, there is,  
17 and we did. And, by the way, we have had subsequent  
18 discussions with them which did not bear fruit. So the meet  
19 and confer we believe was satisfied. But we also believe that  
20 the point we're making is that, in any event, the underlying  
21 relief that is sought here, which is a procedures motion, does  
22 not require a meet-and-confer process.

23 THE COURT: Thank you. I hear you.

24 So your revised procedures are now anticipating that  
25 the order with the notice of participation procedure will be

1 served by Prime Clerk on every bondholder claimant, and that's  
2 a difference from the original iteration?

3 MR. DESPINS: Yes. We've enlarged that. So let me be  
4 precise about that, your Honor. There are two things we did.  
5 One is Prime Clerk has this category called bond claim, but, by  
6 the way, that could be so many things. It could be people  
7 sometimes mistakenly filing against the Commonwealth when they  
8 have a claim against PREPA, etc., etc. But we said let's not  
9 look at the expenditure. Let's give notice to everyone who  
10 filed something that is classified by Prime Clerk as a bond  
11 claim. They're getting actual notice by mail.

12 As to the people who are the challenged bondholders,  
13 meaning the bondholders that are subject to this objection, all  
14 bondholders, they will get actual notice through Prime Clerk.  
15 So I called them yesterday and said, "Are you sure you can do  
16 this?" Yes. In fact, they've done it before.

17 And the way to do it is -- the best way to know this  
18 is the right address is it's where they send the money when the  
19 money is due on the bonds, so that the holders have two  
20 options, either to say "I want to get paper notices," in which  
21 case they will get paper notice through the system that Prime  
22 Clerk will set up. Or if the holder has checked the box and it  
23 wants email communications, they will send it to them by email.  
24 But all holders of challenged bonds will get notice of this --  
25 of the notice of participation requirement modified, by the

1 way, to say you only have to -- if you're a small holder,  
2 meaning \$10 million or less, you just have to raise your hand,  
3 give your name, date of purchase, and the amount and the CUSIP,  
4 and that's it for you. So they will all get that notice.

5 THE COURT: All right. There seems to be an  
6 inconsistency between the notice of participation which says  
7 that the notice of participation has to be filed on the, I  
8 think it's 35- or 50-day timetable if people wish to  
9 participate in the litigation, and the new provision in  
10 paragraph 6 for late entrance. So that's something that will  
11 need to be resolved. And the late entrance procedure doesn't  
12 speak to dispositive motion practice. So that is something  
13 that, again, you will need to think further about. So I just  
14 want to flag those two things. I don't need you to comment on  
15 those right now, but I will flag those.

16 One thing that I do want to ask you about specifically  
17 is the provision as to what you're now calling significant  
18 bondholders, which I think is a really unfortunate term because  
19 I don't think you should have an implication that they are  
20 insignificant bondholders.

21 MR. DESPINS: We'll change that.

22 THE COURT: So, think about major, leading, first  
23 responding, I don't know, but something other than  
24 significant/insignificant, but that they would risk having a  
25 default judgment entered against them.

1                   So my concern is on a couple of levels. One is, are  
2 you really proposing to seek to disallow simply on a default  
3 basis even a major bondholder where the issues that you're  
4 raising really are fundamentally legal ones. Let me just ask  
5 these three questions.

6                   So that's the first one. So should anybody be at risk  
7 of having a default judgment as opposed to ultimately being  
8 bound in some way by the litigated result.

9                   And then the notice as it exists now only speaks to a  
10 substantive consequence of failure to file as to this  
11 significant group and doesn't say anything about what happens  
12 to other bondholders who don't respond. Would you want to put  
13 them at risk of a default judgment as well, or is there some  
14 other mechanism, a law of the case mechanism.

15                  And the other thing to be thinking about is what would  
16 happen with respect to a settlement? Would you queue up  
17 defendant Rule 23 motion practice. Is there something that  
18 would be appropriate to say in the notices at this juncture  
19 about what happens if I don't respond.

20                  MR. DESPINS: Easy questions. Not.

21                  THE COURT: So, actually, let me add a fourth point,  
22 which is, if I grant this motion, I'm going to ask you to think  
23 about these issues and very specifically include in your second  
24 stage procedures meet-and-confer and recommendation exercise  
25 language as to the consequences and the situations that I have

1 just laid out.

2 MR. DESPINS: OK. I was obviously joking when I said  
3 these were easy questions, but let me try to address them.

4 The first one is the default against the big holders.  
5 And by that -- when I say big holders here, I meant the ones  
6 that are attached as Exhibit 1 to the objection. These are  
7 identified. Most of them are here.

8 THE COURT: But what if they're in one of these clubs  
9 and they don't necessarily want -- or ad hoc groups, and they  
10 don't want to necessarily file a paper in their name. They  
11 trust the guy next to them to advance their issues. Why do  
12 they have to start filing briefs or filing papers just in order  
13 to --

14 MR. DESPINS: Well, they could indicate that. We  
15 could have a provision, your Honor, that would basically  
16 provide that, which is -- we're talking about the Exhibit 1  
17 list now. There's about ten names there.

18 THE COURT: Yes.

19 MR. DESPINS: Any of these individuals can send us a  
20 notice saying that Group X, Y, Z will represent them or they  
21 will be bound by the outcome of what happens with that group or  
22 something like that. We are happy to have that.

23 What we didn't want is a situation where they are not  
24 participating, and, therefore, we don't know what happens to  
25 them. We've identified them. They have filed proofs of claim,

1 so technically we could get a default judgment, but that is not  
2 our intent. Our intent is really to have them participate. If  
3 they don't want to participate directly, they can rely on the  
4 efforts of others. They can tell us that. That's fine. We  
5 can provide for that.

6 The second one is what happens to the other  
7 bondholders? Somebody who just doesn't doing anything, doesn't  
8 respond. Your Honor, I think that practically that bondholder  
9 will be bound by the outcome, and I'll put aside settlement for  
10 a second.

11 THE COURT: I think we have a little feedback issue.

12 MR. DESPINS: I will continue. So acting practically  
13 they were bound, but there's nothing in the order now that says  
14 that. We probably can add something in the notice. We  
15 actually have something in the notice that says, "this will  
16 affect your rights" or "may affect your rights." So we could  
17 bolster that and say that any ruling by the Court in this  
18 matter could be binding on you. We're happy to -- my point is  
19 practically they are bound. I know in other cases where there  
20 was no indenture trust, the other mega cases, essentially  
21 nobody showed up because they knew the judge was not going to  
22 change her/his mind after ruling on the merits of one of these  
23 things.

24 THE COURT: But you wouldn't be making, for instance,  
25 an early application for disallowance of non-responding claims

1 simply on the basis of winning by default.

2 MR. DESPINS: Not on those, no, your Honor. The only  
3 ones we really want to capture that way are the ones on Exhibit  
4 1 to the objection. We would not seek default against -- the  
5 only thing people are affected is at this point if they don't  
6 raise their hands and say "I want to participate," they cannot  
7 participate although we have the safety valve where they can  
8 raise their hand again 30 days before the trial. I understand  
9 we need to address the dispositive motions in that section but  
10 we are not going to seek default against the great unwashed  
11 here, no. That's not the intent.

12 THE COURT: That's another unfortunate term. We won't  
13 use that again, please.

14 MR. DESPINS: The smaller holders.

15 On the issue of settlement, your Honor, I don't think  
16 we can address this in this context because we're really -- the  
17 proceeding is in its infancy at this point. It's true that we  
18 should add some language in the notice that would say, in order  
19 to protect your rights, you may want to participate. There  
20 could be dispositive motions, there could be a settlement,  
21 something like that, but to say how we would implement a  
22 settlement today, because it's likely if there's a settlement  
23 to be implemented through a plan where they'd be voting and,  
24 therefore, I think I would be getting ahead of myself --

25 THE COURT: I'm certainly not asking you to do it in

1 the procedural documents that you are requesting me to sign in  
2 connection with this particular urgent motion practice. I'm  
3 suggesting that in your next stage where, after the notices of  
4 participation come in, you start having your meet-and-confer to  
5 develop the, whatever you want to call them, procedural  
6 recommendations with the discovery and the briefing and how the  
7 case ought to be litigated, certainly at least as part of those  
8 discussions, you should start thinking about mechanics of  
9 access notification, how broadly in different scenarios you  
10 might want to try to capture the less active participants. And  
11 so that shouldn't be something that's thought of at the last  
12 minute. As you know, with COFINA, we had a lot of concern  
13 articulated by people who said things happened, they were  
14 totally shut out, it was not on their radar, and have not been  
15 completely happy with the response that you get to respond to  
16 the settlement proposal when it turns up in the plan.

17 So it's something that is worth thinking about in the  
18 earlier stages, and that's why I wanted to put it on the radar  
19 now.

20 MR. DESPINS: Actually, you make me think that one  
21 thing we should do is probably have a third category of people  
22 who just want to know what's going on, an email chain or  
23 notice. So we would say send us your email address and we  
24 would post things regularly to tell them this is what's  
25 happening in the case, and the judge will hear on April 30 a

1 motion to approve for joint trial or proceeding or something  
2 like that so that we could communicate to everyone. So we will  
3 add something like that.

4 THE COURT: You might even want to create a basic  
5 information form that has name, what do you hold, email  
6 address, and say if you fill out that form, you will be on some  
7 sort of list serve, and you won't have to go to Prime Clerk all  
8 the time.

9 MR. DESPINS: Yes, your Honor, we will do that. That  
10 makes a lot of sense.

11 THE COURT: I will try not to prolong this too much,  
12 but I want to get these questions out because it may also help  
13 with the responses.

14 We've talked about the specific bond holding  
15 information. I'm sorry, I have a couple of lists here, so let  
16 me look through what I have.

17 So were you not proposing to translate the objection  
18 procedures in full into Spanish?

19 MR. DESPINS: We will do that. But you're right that  
20 we just drafted one paragraph that says there is an objection.  
21 We will do the full translation.

22 THE COURT: All right. You may have explained this a  
23 couple minutes ago, but I didn't follow it. Is Prime Clerk  
24 able to identify the beneficial holders of the challenged GO  
25 bond claims?

1                   MR. DESPINS: Yes. They have the ability to know  
2 exactly, whether it's 10,000, 13,000 people. They know exactly  
3 how many there are. That have the CUSIP. We just give them  
4 CUSIP numbers, which we have in multiples. They can actually  
5 give us a price how much it will cost to contact them, so  
6 that's the way we know.

7                   THE COURT: Thank you.

8                   You have DTC posting copies, so CEDE & Company doesn't  
9 need to be involved at all?

10                  MR. DESPINS: No, we made a mistake. CEDE does not  
11 have sub-holders. Everything goes through DTC electronically.

12                  THE COURT: So, turning to the notices, you said you  
13 do have a line that says, "An objection has been filed, and it  
14 may affect your rights." I would plan to ask you to be more  
15 specific about that to get people's attention and to include an  
16 additional bold sentence along the line of: "If the Court  
17 grants the objection in whole or in part, claimants recovery on  
18 account of effective bonds will be eliminated in whole or in  
19 part, and claimants will be forever barred from asserting such  
20 claims against the Commonwealth, from voting on any plan of  
21 adjustment filed in this Title III case, and from participating  
22 in any distribution in this Title III case on account of such  
23 claims. Thus, the objection may affect your rights."

24                  And that should be in the Spanish version as well.

25                  MR. DESPINS: Yes, your Honor.

1                   THE COURT: Let's see. I'm trying not to bother you  
2 with line edits, though there will be a process for that, but  
3 you want to look at your nomenclature. Sometimes you call  
4 people "challenged GO bondholders" and then you call them  
5 "challenged bondholders." So you will want to look at that.

6                   MR. DESPINS: Yes.

7                   THE COURT: On page 2, it's the new revised paragraph  
8 two of the procedures regarding notice of participation to  
9 respondents who are not challenged bondholders. Who is that?  
10 Are they insurers?

11                  MR. DESPINS: No -- well, it could be insurers, but I  
12 think the insurers will probably view themselves as  
13 respondents, but it could be other parties in interest. If  
14 they have standing to be heard, that would be people like that,  
15 because other people may have views on this, either for or  
16 against in the case, I mean, other creditors.

17                  THE COURT: OK. And I think I have flagged the other  
18 things. Just give me one moment to check.

19                  Actually, I've gotten through the issues on my list.  
20 So thank you for bearing with me on that.

21                  MR. DESPINS: No problem, your Honor.

22                  THE COURT: Mr. Stancil.

23                  MR. STANCIL: I think Mr. Peck was going to begin,  
24 your Honor.

25                  THE COURT: That's fine. I had you written down as

1 the second person.

2 MR. PECK: Good morning, your Honor.

3 THE COURT: Good morning, Mr. Peck.

4 MR. PECK: James Peck of Morrison & Foerster. We're  
5 counsel to the Ad Hoc Group of constitutional debt holders. We  
6 have joined with the Commonwealth Bondholder Group and with  
7 Assured Guaranty in filing a joint objection. I can tell from  
8 having witnessed the colloquy that you are familiar with our  
9 objections and also with the procedures that concern us.

10 This is not a standard omnibus objection to claims. I  
11 think it is apparent to everybody that this is truly  
12 extraordinary, and it's happening very quickly. We are  
13 watching sausage made in realtime. Yesterday we had a  
14 meet-and-confer, Mr. Despins claims that it didn't bear fruit.  
15 It actually bore the fruit of the revised order that was  
16 submitted late yesterday, and that's what we're dealing with.

17 What we are looking for is a reasonable opportunity to  
18 continue to engage with the Movants so that we can help to  
19 develop a set of procedures that work in a massively  
20 complicated case management challenge. This isn't just  
21 challenged bonds. This is a case management challenge of  
22 extraordinary proportions.

23 As some of your Honor's questions point out, we have  
24 categories of bondholders that have chosen to organize during  
25 the bankruptcy who are being treated as "significant" holders

1 or holders that because they have organized are going to be  
2 treated less favorably in terms of time limits than those that  
3 have not yet appeared and been active in the case. We have  
4 bondholders, some of whom have filed proofs of claim. We have  
5 others that have not filed proofs of claim. There are  
6 thousands of them.

7 We have essentially class action-type challenges  
8 associated with something that is styled as an omnibus claim  
9 objection. It's true it's an omnibus claim objection, but it  
10 is pervasive in its potential impact, and all we seek is a bit  
11 more time so that we can continue to engage with Mr. Weisfelner  
12 and Mr. Despins and their colleagues in an effort to develop a  
13 thoughtful set of procedures that actually will work, at least  
14 in our judgment will work, better than the ones that have been  
15 now imposed on us in two hasty moves.

16 The first hasty move was the filing of the motion on  
17 January 14. We objected to it jointly. It took quite a lot of  
18 work just to coordinate among the lawyers who needed to review  
19 drafts and work together, but we did that, and we filed a joint  
20 objection. That joint objection was filed on the 25th. The  
21 reply was on the 28th. We met yesterday to talk about ways  
22 that we might work this out and avoid a contest.

23 Mr. Stancil is going to provide some detail concerning  
24 proposals that the bondholders would assert would be  
25 appropriate changes to these proposed procedures. The only

thing that I suggest as an overview is that we give the parties who are to be affected by these procedures an opportunity to engage with one another and to develop something that works, something that's consensual as opposed to something that's being jammed on us.

THE COURT: So is your concern -- I see the proposal as it stands now to have a 30- to 50-day period for people to say, I want to be at least in some part of the room where it happens in terms of the development of actual case management and litigation procedures and the ability to participate on a substantive basis when we get around to substantive litigation. So that's 35 to 50 days, depending on which group you're in. And then after that, there is a period which is now proposed to be a shorter period of time than that, whether it's 20 days, 30 days, something like that, for meet-and-confers to actually develop the case management proposal.

So, is your concern more with a lack of time within the actual "let's sit down together to develop a case management proposal" which will then be noticed up with an opportunity for people to object to it and for a reply and then a conference with the Court, or do you feel that there is even still more time needed than that 35- to 50-day "raise your hand and you know sign the Board"?

(Continued on next page)

1                   MR. PECK: These time limits, as they have been  
2 proposed, are entirely arbitrary, your Honor. 35 days was  
3 apparently out of the air. It wasn't anything that we  
4 discussed or agreed to.

5                   THE COURT: Why is it too short?

6                   MR. PECK: It may not be too short for the group that  
7 is already represented, but if the group that is already  
8 represented is going to have some meaningful role, and I am not  
9 offering it, if liaison counsel, to try to be helpful in  
10 dealing with those parties that truly don't understand this, is  
11 going to take some more time. Also, it is kind of unfair  
12 discrimination within the class of GO holders that some get  
13 quite a bit of time and others get less time.

14                  THE COURT: What if everybody had 50 days?

15                  MR. PECK: Why not 60 days for everybody?

16                  THE COURT: I think we said pretty much the same thing  
17 at the same time. I said what if everybody had 50 days.  
18 You're bidding 60.

19                  MR. PECK: That would be an improvement for sure.

20                  It is an example, however, that to some extent we're  
21 preparing a special ad hoc bankruptcy rule without a period for  
22 comment.

23                  THE COURT: There is no notice and comment requirement  
24 for case specific orders, but I do want to make sure that there  
25 is enough time for the thoughtful development of procedures.

1 But we don't have all the time in the world here, and at some  
2 point, people need to focus, get together, and write something  
3 down. What I want to do is provide enough time, but not lose  
4 time unnecessarily.

5 MR. PECK: I would think that a week or two would be  
6 sufficient for us to be able to work together and develop  
7 something that might be consensual.

8 THE COURT: The something being a different procedure  
9 for raising your hand or what?

10 Because the more complicated case management  
11 development portion of the proposed procedure here takes place  
12 after people have raised their hand, and said they want to come  
13 into the room, then we get together and really start talking  
14 about the stuff that is hard.

15 Are you trying to push the beginning of that phase off  
16 later, or do you want that to be longer?

17 What do you want?

18 MR. PECK: Your Honor, it is not just raising your  
19 hand. It is using your hand to write something down, and what  
20 is it that actually has to be written down at that point, if  
21 anything.

22 What does it mean to indicate your willingness to  
23 participate? Is there to be, what Mr. Despins and his  
24 colleagues have requested, which is they get the chance to  
25 control how claims get organized?

1           Or maybe --

2           THE COURT: They get the chance to propose it.

3           MR. PECK: Maybe we can be helpful in  
4 self-organization that could be more efficient, things of that  
5 sort might be reasonably discussed.

6           I am well over my time, and I know that Mr. Stancil  
7 has more detailed proposals to suggest to your Honor, and that  
8 might be a good time to transition to him, with your  
9 permission.

10          THE COURT: Thank you, Mr. Peck.

11          MR. PECK: Thank you very much.

12          MR. STANCIL: Good morning, your Honor.

13          THE COURT: Good morning, Mr. Stancil.

14          MR. STANCIL: Mark Stancil for the Commonwealth Fund.

15           With the court's indulgence, I would like to start up  
16 in the clouds and work my way down to the weeds.

17          THE COURT: Fair enough.

18          MR. STANCIL: At the highest level, I do think we  
19 would be remiss not to clarify the status report offered by the  
20 Oversight Board. Regarding progress and where we are, I think  
21 this is directly relevant to the motion we are discussing, I  
22 think it would be generous to say that levying a claim  
23 objection against \$6 billion of bonds on the eve of mediation  
24 and reserve the right to raise an objection as to billions more  
25 is a strange way to go about consensus building.

I would add only that if we are going to end up in litigation of issues to clear out the chaff, if we can't get to something consensual, I am hopeful the Oversight Board will be equally as interested in litigating our issues that I think undermine the Board's position thus far as it is in litigating issues that underlie the bond holders' positions.

With respect to the specific motion. I don't want to spend too much time on the meet and confer. I do feel compelled to correct the record. We did meet with Mr. Despins roughly a week before his objection was filed. We agreed at the outset that the content of that session would be confidential.

But now that we're discussing what was discussed in there, not a whiff about this procedures motion was mentioned. I received a phone call. We had a phone call at 4:45 on January 14, the very day they filed the procedures motion, less than that, I believe, five or six minutes. Mr. Despins gave an oral summary of the procedures motion, which is now 18 or 20 pages long.

I did not tell Mr. Despins simply that I couldn't respond. I said, I don't understand what you're asking. I said, I can't tell if your procedures are substantive. I would like to get to how very substantive these procedures are. I said, Luc, you need to send me the motion and I can read it and comment on it, but I can't tell you what I think or give you my

1 views without seeing what you're actually proposing. Now  
2 having seen it, I understand why he didn't want to share it in  
3 advance. Certainly we are getting closer on the first version  
4 that is substantive to this procedure, your Honor. With that,  
5 I think that is probably enough said on that.

6 If I may, I think there is a much simpler path here.  
7 I think it is in line with something your Honor suggested a few  
8 moments ago. We don't need and we should not have two tracks  
9 for large and small bondholders and, in fact, there is a layer  
10 of complexity to this that I think is not yet apparent, and I  
11 want to make sure the court is aware of it.

12 This claim objection directly targets two bond issues.  
13 As you will notice, there is conspicuous preservation of rights  
14 to apply this logic -- I use that term loosely -- to other  
15 bonds. They may go after other bonds. We are not talking  
16 contrary to what Mr. Despins said about priority claims or fair  
17 equity work environments or other arguments that ultimately  
18 determine the rights of GO bondholders.

19 We are talking about whether we even know what the  
20 universe is of bondholders affected by this theory. Just at  
21 the outset, I think it is incredibly important to give ample  
22 notice to people who may need be to reading in Spanish, they  
23 may be coming for still further bonds as well, particularly  
24 given the nature of this challenge. This is a challenge based  
25 on recharacterizing bonds that have been issued by this entity

1 for 60 years on the backs of commonwealth guarantees that have  
2 been given for 50 years. Some of these bonds that they're now  
3 trying to move over to the commonwealth category were issued in  
4 1993.

5 So in terms of getting people notice, that a piece of  
6 paper that they hold may be the product of what they are  
7 calling now the sham entity. I think we ought to take a deep  
8 breath. We are going to get there --

9 THE COURT: So I think it is 18-0149, there is an  
10 adversary that targets PBA bonds. This objection on its face  
11 targets bonds that were denominated as GO bonds and two series  
12 of GO bonds, 2012 and 2014.

13 Are you collapsing the two and saying that these two  
14 pieces of litigation are harbingers of future  
15 recharacterizations, which I gather is what you're thinking  
16 about and how you're describing the PBA litigation, or is this  
17 something that is truly focused on in this omnibus claims  
18 objection?

19 MR. STANCIL: Both, your Honor, with respect.

20 These two lawsuits that have been filed thus far.  
21 They are not entirely overlapping, but they are not entirely  
22 distinct. You will see in the GO claim objection, for  
23 example -- I want to say it is in paragraph 66, but I'm pulling  
24 that out of memory so someone will correct me -- where they  
25 refer to the PBA itself being a sham entity. I would think

1 that would bear and be born upon by whether there are, in fact,  
2 true leases.

3           Their entire premise in the GO claim objection is that  
4 PBA is a farce. I would think it would be highly relevant to  
5 know whether PBA is actually entered into, as we believe, arm's  
6 length real business arrangements. It has 1,000 employees.  
7 It's got 1800 leases. I think these are facts that are  
8 directly relevant to whether it is, on the claim objection  
9 side, a sham.

10           I think there is significant overlap, and one of the  
11 reasons we think it is necessary to take a breath and get an  
12 orderly procedure here, I would like to get to in a second, is  
13 these things, I think, can proceed in parallel. But I think we  
14 need to be quite candid about the fact that there are  
15 overlapping issues certainly of fact and maybe also as of law.

16           Let me get to the other part of your Honor's question,  
17 which is are we just talking about them recharacterizing other  
18 bonds. They have not disclaimed applying this debt limit  
19 theory to still further categories of GO bonds. So, I mean,  
20 let notice be given, if notice is necessary. It can come from  
21 me.

22           The notice that you're going to see, the statements of  
23 interest that you will see flowing in here, will not just be  
24 other 2012 and 2014 bondholders, I don't think. I think they  
25 may well be at least overtly or indirectly statements of

1 interest from other people. As Mr. Despins said, he basically  
2 wants to litigate the legal issues here for all purposes. It  
3 is going to be a mess.

4 So if I can be constructive instead of merely  
5 critical, let me propose what I think is a much simpler  
6 solution to the problem that is much more in line with what the  
7 court has, I think, indicated so far.

8 We think notice along the lines of what we're  
9 discussing is fine. I do want to clarify one mechanical issue.  
10 The Prime Clerk has only those parties who filed proofs of  
11 claim, and since a proof of claim is not necessary here, even  
12 with respect to the people that it can reach. We don't know  
13 who that is. I don't think they have -- so they don't have a  
14 universe.

15 DTC does not actually have information on individual  
16 beneficial holders. As your Honor may be aware, there is, I  
17 believe, a registered security that basically sits in DTC. DTC  
18 owns the security. Participants in DTC have accounts there,  
19 and they basically say, I, Goldman, or I, you know, Merrill, or  
20 whomever, my clients collectively own X hundred million of this  
21 security. And it is Goldman and Merrill and the other prime  
22 brokers who are called participants in the DTC system, in turn,  
23 have information about which clients they have.

24 Some of the those clients may be funds, which, in  
25 turn, may have individual holders. The idea that there is a

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1 mouse click to give notice out to thousands of bondholders is  
2 going to take a lot more time.

3 THE COURT: So this is the system that Prime Clerk is  
4 proposing to tap into that Mr. Despins talked about as a means  
5 of identifying and notifying beneficial holders?

6 Because right now the proposal is just for DTC to put  
7 it up on their litigation relevant page on their website, and  
8 so presumably, you have to be somebody who is in the habit of  
9 visiting there at all. But Mr. Despins suggested that Prime  
10 Clerk would be able to tap into a more specific database.

11 Are you saying that that more specific database is  
12 only going to give you either Goldman or Goldman street names,  
13 and then Goldman would still be the only one who would know  
14 what that goes to?

15 MR. STANCIL: I'm getting a little out of my depth,  
16 your Honor, but that is my current understanding. All DTC knows  
17 is the name of the participants, and the participant is the  
18 Goldman and the prime brokers. I don't believe that DTC  
19 possesses individual holder data. If I'm wrong, someone will  
20 correct me.

21 THE COURT: You would think that there would still  
22 have to be, one way to do this would be that the Prime Clerk  
23 notice to whoever is in there listed as beneficial holder would  
24 have to include, as we do in the securities litigations, a  
25 request that whoever it is who knows the true parties in

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1 interest, then further can convey the information to the true  
2 beneficial holders and parties in interest?

3 MR. STANCIL: Yes. I'm getting vigorous nods from the  
4 people who know that. I think that is right.

5 The point being not that it cannot be done, but that  
6 it is going to take time to do and to do correctly.

7 if I can just apologize. I'm going over, your Honor.

8 THE COURT: You're responding to me, so...

9 MR. STANCIL: You'll give me the hook when it is my  
10 time.

11 THE COURT: I'll tell you "thank you" when I've heard  
12 enough.

13 MR. STANCIL: So notice should go out. We think  
14 this should be one period for responding of an intent to  
15 participant. 60 days, I think, is realistic. I originally  
16 considered proposing 90. I think 60 is probably about right to  
17 get this, because we're going to be burning days up front with  
18 all sorts of phone calls and e-mails between the DTCs and the  
19 Goldmans and I think there is hundreds of participants within  
20 the thousands of individual holders. So I think a 60-day  
21 period for responding.

22 If I may, your Honor, I think there is a couple points  
23 on the statement of interest that need to be addressed, because  
24 I think Mr. Despins is not entitled to what he seeks. And I  
25 think actually what he is asking for is counterproductive. We

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1 should not have to give a summary -- bullet points, high-level  
2 or whatever -- of our defenses that we intend to raise, and  
3 that is really for two reasons.

4 Mr. Despins now acknowledges, in response to our  
5 objection, he is willing to make that a non-binding statement  
6 of what you might say. OK. Well, that tells me that he  
7 doesn't actually need to bind people to what they are going to  
8 say to organize them. He would like to know.

9 What is interesting is Mr. Despins illustrated the  
10 defenses that he is interested in. He knows exactly what  
11 people intend to argue. In fact, he tried to anticipate some  
12 of these arguments in his claim objection. What he wants to  
13 know is who is going to argue them. That is improper.

14 He wants to know who, within these individual ad hoc  
15 groups, is going to raise which defense. But he knows, as well  
16 as we all know, that knowing who may be soft on this point or  
17 other will give him leverage in trying to shape the procedures,  
18 perhaps, in trying to pursue other strategies outside of the  
19 litigation.

20 Your Honor, we think that is improper. Let me tell  
21 you why, in any event, it is not going to help. The best way  
22 to narrow the issue is not to require bondholders, whose claims  
23 are being challenged, to give their adversary a summary of the  
24 defenses. The best way -- and this is baked into step three of  
25 our procedure here, after notice, 60 days, and step three. The

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best way to really narrow this is to let the creditors who are affected -- all of them, large and small, these series and other series that may feel threatened -- let them all get into the room and they can organize much better in a common interest basis what needs to be presented and when.

Now, Mr. Despins may not agree with it. We can talk about it. We think if we had, say, 30 days to work together to try to come back to your Honor with a joint proposal for briefing and discovery, we think we can do it. But for someone who has lived this for however many years now, I can assure we can get much farther down the road to winning and organizing these issues, if we can have candid conversations with other creditors about the most logical way to proceed, instead of I think what your Honor would see, is if Mr. Despins' procedures are adopted, a bunch of sort of cover the waterfront, you know, it is going to read like a list of affirmative defenses at the end of a standard civil complaint. It is going to be, you know, unclean hands, hands that are too clean, it is going to be my dog ate my homework. It is going to be every defense in the world, and it is going to be far less helpful than letting us do it ourselves, without inviting the adversary into our proceeding.

THE COURT: May I just ask you this. If, in fact, anybody with an IQ in the high two digits is going to present a laundry list and/or say, and furthermore, I will raise in my

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1 discretion any other defense not mentioned here that one of my  
2 friends raises on their piece of paper. You will all have  
3 identified yourselves to each other. You will all have  
4 identified that to Mr. Despins.

5 At this first meeting when it becomes a true  
6 meet-and-confer of the objector and respondent constituencies,  
7 each constituency is going to have to come with a wish list,  
8 starting wish list as to sequence anyway, all which leads me to  
9 believe that there is no real harm in what Mr. Despins has  
10 asked.

11 You're still going to want to have your premeeting  
12 with people you think are similarly in interest, and you'll  
13 have this premeeting, and then you're going to come to discuss  
14 lists.

15 MR. STANCIL: I respectfully disagree, your Honor.  
16 This is based, in large part, on personal experience dealing  
17 with this issue in particular over the last few weeks alone  
18 with my own clients. The issues that I think we're going to be  
19 discussing are more complicated.

20 In order for Mr. Despins to prevail, there are about,  
21 you know, 18 different steps you have to go through.  
22 Organizing those 18 steps is a much more complicated endeavor.  
23 It is aided by a candid assessment of claims and defenses more  
24 than it is aided by sort of a shotgun scattergun approach.

25 The idea that we're going to put everything on the

1 table, Mr. Despins knows what is on the table. Now everything  
2 is on the table, and we are going to be able to work something  
3 out is, I think, helpful to him in that he can start to say,  
4 Well, this is a bondholder that wants to raise this defense,  
5 this is a bondholder that wants to raise this defense. Now let  
6 me say, Well, this ad hoc group shouldn't be participating in  
7 this defense, because you've got this two clients who have this  
8 defense and two clients with that defense. That is what I  
9 think, with respect, I think he is seeking.

10           If we came back to your Honor and said, We have  
11 caucused and maybe we can't perfect it, but we think here are  
12 three issues that all the bondholders agree should be litigated  
13 first. I think that is realistically what is going to happen  
14 under our proposal. These are the three issues that should be  
15 litigated first, and we may not have to get to issues 4 through  
16 20, or I forget how many I said there were.

17           I think that is going to be a lot more effective.  
18 And, I guess --

19           THE COURT: So you want to bring it back to me before  
20 you talk about it with him?

21           MR. STANCIL: No. I think we can get -- I mean, with  
22 respect, your Honor, I think if all of the bondholders,  
23 substantially all of the bondholders can agree among themselves  
24 which issues ought to be litigated up front and how, I think  
25 that is how we ought to do it, and we're happy to consult with

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1 Mr. Despins.

2 If there are certain things that he wants to bring in,  
3 we can discuss it. But asking my adversary to sort through my  
4 defenses and decide to make his own proposal use to which ones  
5 he wants to do, and first to get a roster of who intends to  
6 make them, I think is counterproductive.

7 Can I add one other dimension to this that I think is  
8 actually problematic?

9 Mr. Despins said he doesn't need anything substantive.  
10 I think he does. That is what he is asking for by definition.  
11 He said, I don't know need any discovery. That is not correct.  
12 He is asking for holdings information, dates of purchase, etc.,  
13 etc. That is discovery germane to -- if it is relevant --  
14 germane to a defense that he anticipates will be raised. That  
15 is very much the kind of prefilings discovery he is seeking to  
16 obtain.

17 I respectfully submit that what they are trying to do  
18 is predetermine whether issues like this ought to be relevant.  
19 I will tell you I do not think that issue he previewed is going  
20 to make one wit of difference to the success of his claim. I  
21 am not going to preview our legal strategy, but I think it will  
22 not pan out the way he thinks it will pan out. That is  
23 precisely the sort of issue we should and could discuss among  
24 creditors.

25 If I could, your Honor, the simplicity of the proposal

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1 is give your notice, come in in 60 days and say, Whose team are  
2 you on? Are you pro-objection or are you anti-objection? OK.  
3 Anti-objection people, you have 30 days to come back to the  
4 court with a proposal for briefing and discovery, if necessary,  
5 and we will meet and confer exhaustively with Mr. Despins in  
6 that period.

7 If we go down Mr. Despins's route, and we are doing  
8 this sort of bullet point list in advance, I think we need more  
9 than 30 days in that stage, your Honor, because I think there  
10 is going to be a lot of additional chaff to clear out among  
11 creditors, if we haven't had the opportunity to organize  
12 ourselves ahead of time.

13 But if I may, your Honor, the thing that I think is  
14 crucial, because I think it will simplify everything, we should  
15 have one set of deadlines. The small bondholder/large  
16 bondholder distinction does not make sense. We did live  
17 through two days of COFINA hearings and people feeling they  
18 were excluded from the process. I don't see any value in  
19 saying we are going to get part of the way down to deciding the  
20 procedures that are going to affect everybody, but you can come  
21 in later and argue about them. That seems like a terribly  
22 inefficient way to do it.

23 To Mr. Despins' point that we are months and months  
24 and months away from a substantive hearing, I agree. I cannot,  
25 for the life of me, imagine why it matters to get started on

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1 day 35, as opposed to day 60, with a process that we all agree  
2 should come.

3 Unless there are other questions, I think that I have  
4 well exhausted my time.

5 Thank you, your Honor.

6 THE COURT: Thank you, Mr. Stancil.

7 Mr. Ellenberg.

8 MR. ELLENBERG: Mark Ellenberg on behalf of Assured  
9 Guaranty.

10 Your Honor, we have in excess of \$5 billion of  
11 liabilities we have insured in this case, and one and a half  
12 billion of those liabilities are GO bonds, some of which are  
13 subject to this objection, some of which are not.

14 Your Honor, we have received no prior notice of either  
15 the objection or this motion.

16 Your Honor, it is hard to over the size how big a  
17 boulder this is being dropped in the middle of this case at a  
18 very delicate time in this case. I think it is a very dubious  
19 road for us to be going down at this point, if ever. And  
20 certainly if we go down this road, we should be walking down  
21 this road, not running down this road, because due process  
22 concerns and compliance with federal rules of bankruptcy  
23 procedure are very much at stake.

24 Just to give you a few examples of the complications  
25 relating to here. If their assertions are correct, then the

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1 government of Puerto Rico committed securities fraud when it  
2 sold the bonds at issue.

3 Is that a compulsory counterclaim that needs to be  
4 asserted in this case? If so, that is going to dramatically  
5 complicate things. It is one of the issues that we have just  
6 now started thinking about.

7 I would also point out that the Oversight Board  
8 retained the firm of Kobre & Kim to diligence, just this claim,  
9 just these claims, and they, without expressly opining on this  
10 litigation, could find no evidence to support it. In fact,  
11 they concluded to the contrary, that Puerto Rico has been  
12 extremely consistent in having interpreted the debt ceiling and  
13 that they had a very robust procedure for determining  
14 compliance.

15 If that is the Oversight Board's own expert retained  
16 for the purpose of determining whether future lawsuits were  
17 appropriate, and having paid for that report at the expense of  
18 the estate, would have two law firms pursuing that litigation  
19 at very high costs with no basis whatsoever to the Kobre & Kim  
20 firm.

21 If I can raise one other issue, your Honor. If you  
22 wanted a bold-faced notice that if the objectors prevail here,  
23 your bonds will no longer have value and you will receive  
24 nothing on your claim. It is not that simple, your Honor.  
25 Actually, the very cases they cite in their objection point out

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1 that if you want to attack a bond issue as exceeding the debt  
2 limit, you should do it before the bonds are issued. If you do  
3 it after the bonds are issued, you may prevent future issuances  
4 in violation of the debt limit, but you do not get retroactive  
5 relief. The bonds remain outstanding.

6 THE COURT: I meant to frame a worst case analysis to  
7 get people's attention, not to cover the entire scope of  
8 possible outcomes.

9 MR. ELLENBERG: I understand, your Honor. My only  
10 point -- I know I am going over my time -- is this is very  
11 complex. It raises a host of 504 issues, and at the end of the  
12 day, it is a frolic and a detour and a distraction from the  
13 real issues that need to be hammered out to obtain a  
14 commonwealth plan of adjustment. Because, indeed, as long as  
15 the GO claims still have a priority, the unsecured creditors  
16 don't even benefit from invalidating these bonds if they could  
17 even achieve that invalidation, because the remaining bonds  
18 will just get moved. This is the wrong issue to be taking up  
19 at this time.

20 Thank you.

21 THE COURT: Thank you, Mr. Ellenberg.

22 Mr. Despins, we'll go back to you.

23 MR. DESPINS: Thank you, your Honor.

24 Luc Despins with Paul Hastings. Very briefly, your  
25 Honor.

1           The whole theme here is that we're running where it is  
2 hasty, etc., etc. We don't believe it is hasty at all. Just  
3 to resolve this issue of the 35 or 50, we'll give them 60 both  
4 sides. We think that is plenty of time.

5           I want to be very clear about this. I did check with  
6 Prime Clerk, and I said, Are you sure you can reach out to  
7 these people and give them paper notice, if they elected to  
8 give that? They said yes. And I said, How do I know that?  
9 Because we just did it in COFINA with 42,000 bondholders, a  
10 total of \$17 billion.

11           And they already have sent notices to the same  
12 challenge bondholders, other notices in the case. So, again,  
13 as I said, that is why they are able to tell us, it will cost  
14 \$5,700 to send this, because they know how many beneficial  
15 holders of these CUSIPs there are. I don't want to leave any  
16 doubt about their ability to do that.

17           Yes, there may be a period of five days before it  
18 takes place and all that, but that is plenty covered by the  
19 60 days that we just agreed to.

20           THE COURT: Because there are different understandings  
21 of how this works and the layers of information, I would like  
22 you to follow up by filing something in writing from Prime  
23 Clerk that describes its process and makes very clear whether  
24 the paper noticing ultimately goes to the individuals or  
25 entities that are the beneficial holders or just to the

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1 brokerage or mutual fund level or whatever.

2 MR. DESPINS: For those people who have elected not to  
3 receive e-mail notification, they should get paper, paper  
4 notice.

5 THE COURT: I've used paper as sort of a generic, the  
6 notice, also electronic or paper.

7 MR. DESPINS: Yes. But we will do that, your Honor.  
8 And it may be that they go through steps where it goes through  
9 Merrill Lynch first, and Merrill Lynch -- meaning that is what  
10 the Prime Clerk does for a living. They solicit people. They  
11 know how to get the notices out. They did it for COFINA for  
12 42,000 people. We can do it again. But we will address that  
13 in a formal manner.

14 THE COURT: I think it would be helpful to me and to  
15 the assembled to understand that Prime Clerk is the service  
16 provider here.

17 MR. DESPINS: Of course, your Honor.

18 THE COURT: Do you think you can get that out of them  
19 by Monday?

20 MR. DESPINS: Pardon?

21 THE COURT: Do you think you can get that information  
22 out of Prime Clerk and filed by Monday?

23 MR. DESPINS: I would hope before then.

24 THE COURT: Before that?

25 MR. DESPINS: At the latest Monday. Yes, your Honor.

1                   The statement of intent, your Honor, the point on that  
2 is I don't know if you had a chance to read the objection, but  
3 it is incredibly --

4                   THE COURT: I read the objection.

5                   MR. DESPINS: For an objection, it is incredibly  
6 detailed. People who drafted it said, Why are you putting all  
7 this stuff in? Because we wanted to have all our cards on the  
8 table, and it is now their turn to put their cards on the table  
9 in order to have an idea of how to sequence these proceedings.  
10 I think that what we're asking them, a five-page outline is  
11 really not too much to ask in that context.

12                  In terms of the issue, the implication by Mr. Stancil  
13 is if you allow the objectors to make the first proposal,  
14 somehow we won't play ball, it won't be done the right way. We  
15 have language in the proposed procedures that your Honor would  
16 approve, if you approved it, that says the objectors and the  
17 challenge bondholders shall use reasonable efforts to submit  
18 a preliminary recommendation, which is agreed to by all such  
19 parties.

20                  So one, we have to meet and confer for 30 days. Two,  
21 we have an obligation to try to file the one. Whether we will  
22 be able to accomplish that or not, time will tell. In any  
23 event, if we do file something, they have certainly enough time  
24 to respond to that or say no, they've got it all wrong. They  
25 have their shot. We don't understand how we what we're

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1 preposing is prejudicial to them.

2           Unless you have other questions, your Honor, I think  
3 we're done.

4           THE COURT: I have nothing further.

5           Sir.

6           MR. WEISFELNER: Your Honor, Edward Weisfelner on  
7 behalf of the Special Claims Committee.

8           THE COURT: Would you go to the podium so that the  
9 people in Puerto Rico can see you?

10          Thank you.

11          MR. WEISFELNER: Thank you, Judge.

12          Again, for the record, Ed Weisfelner, Brown Rudnick,  
13 on behalf of the Special Claims Committee of the Financial  
14 Advisory Board.

15          Your Honor, thank you for the opportunity to address  
16 you. This is my first appearance. I was hoping for just a  
17 minute to address or correct some of things I heard that,  
18 frankly, made no sense to me.

19          First of all, on the merits of the objection, I have  
20 read it characterized in a number of different ways, I have  
21 heard it characterized today as a frolic, a detour, the wrong  
22 issue, somehow inconsistent with prior statements that have  
23 been issued by or on behalf of the Financial Advisory Board.

24          I take issue with those statements. The Financial  
25 Advisory Board, working through the Special Claims Committee,

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1 takes --

2 THE COURT: The Oversight Board?

3 MR. WEISFELNER: The Oversight Board, working through  
4 the Special Claims Committee, took the filing of this  
5 objection, together with the official creditors committee, very  
6 seriously after a great deal of examination, including a review  
7 of the Kobre & Kim report, and will allow the merits of the  
8 objection to stand on its own as, when, and if it gets  
9 litigated.

10 Judge, the other thing I wanted to address was  
11 different unfortunate labels we have placed on large holders,  
12 or small holders, active holders, inactive holders. Whatever  
13 labels we ultimately choose to use, lets keep in mind that  
14 these bonds were sold in increments. I believe the minimum  
15 increment was \$100,000. By saying that, I am trying to  
16 distinguish between sophisticated holders and what sometimes  
17 people refer to as retail holders.

18 My guess is there aren't very much people, especially  
19 on the island of Puerto Rico, that bought these bonds as part  
20 of their retirement savings or their long-term investment  
21 goals. These are not retail holders.

22 I would think that the focus we should all have, be it  
23 50 days from now, 60 days from now, or 75 days from now, when  
24 viewed from the perspective of the litigants and the court, is  
25 to come up with a list of case management procedures or a

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1 pretrial order where we have all had an opportunity to advise  
2 the court of what issues we thought needed to be litigated as a  
3 matter of law, or as a matter of fact, or as a mixed matter of  
4 law and fact, and in what order.

5 Your Honor is going to make that decision. You are  
6 the trier. We can only recommend and tell you why we think  
7 certain issues ought to come up in a certain segment or segway.  
8 This is going to be complicated. It is going to be complicated  
9 not because of the objectors' side of the equation, quite  
10 frankly, but because of the respondents' side of the equation.

11 You have the ad hoc groups that have defined in their  
12 2019 statements have what is called crossover holdings. Some  
13 of them have the subject bonds, some of them have other  
14 GO bonds that are not the subject of the objection. The  
15 resolution of the objection will have different implications  
16 for different members of their constituents, and maybe even for  
17 those single holder whose got PBA bonds, GO bonds that are  
18 subject to the objection, GO bonds that are not subject to the  
19 objection.

20 So of course it is going to take them a while to get  
21 their act together, because they've got a lot of internal  
22 conflicts. That is not our fault and, quite frankly, it is not  
23 our problem. We filed an objection. Sooner or later, it is  
24 going to get tried, if it is not ultimately resolved, and your  
25 Honor needs to know how to sequence the concerns, how to

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sequence the legal issues, how to sequence the fact discovery issues, if any, that need to be resolved.

We think we have afforded more than enough time for the inactive holder to know what is going on. The likelihood that the inactive holders are going to say to themselves, you know what, the law firms of Cadwalader, the law firms of Paul Weiss, Mr. Stancil's firm, Robbins Russell, Davis Polk, these are all fly-by-night, second-tier, garbage law firms. So I need to make sure I'm properly protected. I don't care what issues those guys bring to the table. I need to make sure I can protect myself. That is a fantasy.

The people that will drive the bus, so to speak, with regard to structuring the legal arguments are going to be the law firms that are in this courtroom today and have been actively involved in these issues for years. There is a difference between getting people involved and due process. Every holder will get due process notice. The idea that we need to wait months and months and months for those inactive bondholders to show up and decide whether or not they can do a better job than Robbins Russell in litigating this, or in Judge Peck, Mr. Peck articulating the issues, I think is an excuse.

We need to get on with our side saying what we think the issues are that need to be determined as a matter of law and as a matter of fact, the other side needs to tell you the same thing, and then you need to decide, and then we get on to

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1 a trial. But whether it is 30 days, 50 days, or 60 days, it  
2 ought not be that complicated.

3 Your Honor, thank you for the opportunity to address  
4 the court.

5 THE COURT: Thank you.

6 MR. STANCIL: Your Honor, may I have 30 seconds, your  
7 Honor, just to correct one statement?

8 THE COURT: Yes.

9 MR. STANCIL: Mark Stancil for the Commonwealth Bond  
10 Group, your Honor.

11 Mr. Weisfelner said that these are big holdings by  
12 big funds. The 2014 bonds were issued in a minimum amount of  
13 \$100,000. The 2012 bonds are issued in \$5,000 increments. The  
14 Public Improvement Refunding Bond Series 2012(a) are issuable  
15 as registered bonds in denominations of \$5,000. There will be  
16 small holders.

17 Second, it is utterly irrelevant to due process and  
18 notice how many bonds you hold. We have an objection from  
19 Mr. Hein, who is not here today, I believe --

20 MR. HEIN: I am.

21 MR. STANCIL: -- who is an individual bondholder.  
22 That is not a way to make -- I appreciate the free advertising  
23 for my law firm from Mr. Weisfelner, but lets get this right  
24 and do it properly.

25 THE COURT: Thank you.

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1 Mr. Hein wishes to be heard.

2 MR. HEIN: Thank you, your Honor.

3 I was not planning to speak, but I must say that --

4 THE COURT: I'll put you on for five minutes.

5 How's that?

6 MR. HEIN: Thank you.

7 -- the individual bondholders, I think, do have a

8 right to participate in the litigation on a fair basis. And  
9 just as one example, I filed my objection before any other  
10 objections were filed, and I am being faced with the argument  
11 by the FOMB and the UCC that it is untimely because it didn't  
12 comply with their initial request for responses on a federal  
13 holiday. So, you know, I first submit, your Honor, I request  
14 that your Honor take and accept my objection. It was filed  
15 before any of the other responses.

16 Secondly, I think that if there is going to be an  
17 effort to invalidate the bonds of individual holders who bought  
18 the bonds, there has to be consideration of other interests,  
19 and we should not have the situation, as I submit occurred in  
20 the COFINA situation, where certain major holders with  
21 different interests worked out something in a confidential  
22 mediation and settlement, and then was announced as a complaint  
23 of people, the only notice going after the settlement was  
24 struck rather than before the process began. I believe there  
25 should be, as a matter of due process, as well as rule 3007, a

1 notice to all holders before the process begins, including  
2 before the procedures are set.

3 Secondly --

4 THE COURT: When you say the process, do you mean if  
5 it is going the mediation route?

6 Because we are here today because a process to be  
7 notified in some manner for the litigation to all holders is  
8 what we're talking about today. I'm just not sure I follow  
9 you.

10 MR. HEIN: I was not, for example, even though I have  
11 a claim on file with the Prime Clerk -- they have my address,  
12 they have my e-mail -- there was no notification at all of the  
13 supposed motion that was made here.

14 THE COURT: This procedures motion, but this proposal  
15 for further development of the procedures, includes a notice to  
16 go out via Prime Clerk to everyone who filed a proof of claim  
17 that says bond on it, and through Prime Clerk to everyone that  
18 they trace.

19 MR. HEIN: I think there has to be notice given before  
20 things are put in place, including procedures that would bind  
21 people. And two points that I wanted to make on procedures is  
22 that I think there has to be some accommodation of the rights  
23 of individuals who, with modest holdings, aren't doing to be  
24 retaining Puerto Rico counsel with access to the electronic  
25 filing system, so that individuals can submit, perhaps, to an

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1 e-mail address at Prime Clerk their filings that can then be  
2 uploaded onto the docket, thereby giving notice to all.

3 I think that would be a very simple and easy and cost  
4 effective way to allow individuals to submit their positions  
5 without having to air courier things to Puerto Rico and serve  
6 over 20 parties.

7 Secondly, I think there is a fundamental unfairness of  
8 asymmetry where the FOMB and the UCC are spending huge amounts  
9 of money, and even though the individuals bought bonds that  
10 have a first claim against the Commonwealth's resources and  
11 were given a pledge by the Commonwealth, we have a situation  
12 where the FOMB and the UCC are spending large amounts of money,  
13 in effect, being funded by those resources that the bondholders  
14 have a first claim on.

15 I would respectfully submit that there has to be some  
16 type of structure here so that individuals whose interests may  
17 differ from some of the major holders have the ability to be  
18 represented on a coherent basis without this asymmetry where  
19 the individuals have no resources and the FOMB and the UCC  
20 command huge resources.

21 I request your Honor consider appointing a committee  
22 for the individuals who would be able to retain counsel and be  
23 compensated on the same basis as the UCC's counsel.

24 Thank you.

25 THE COURT: Thank you.

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1 MR. LUSKIN: One more, your Honor.

2 THE COURT: Mr. Despins?

3 MR. DESPINS: Sorry to do this out of turn. I didn't  
4 know Mr. Hein was going to be heard.

5 Just on the last point, your Honor already ruled a  
6 long time ago that the bondholder commission not be appointed.  
7 The facts are not different here. More importantly, we know  
8 that there are tons of very competent law firms, including  
9 Davis Polk, Paul Weiss, etc., that are going to fight this to  
10 the end.

11 So I feel Mr. Hein's concern, but on the other hand,  
12 there is adequate representation of the interests of the  
13 holders here.

14 Thank you.

15 THE COURT: Thank you.

16 Thank you all for your arguments. I intend to grant  
17 the motion, to the extent that a two-stage procedure, that  
18 being first identification and then moving on to collaboration  
19 on and flagging of any disagreements on case management  
20 proposals, will be set up.

21 I think that the most efficient thing for me to do as  
22 a next step would be to put out on ECF some sort of written  
23 document requesting revisions to the proposed revised order and  
24 flagging issues for further consideration at one stage or  
25 another, and ask the objectors and respondents, Mr. Despins'

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1 constituency and the objectors to the procedures motions  
2 constituencies, to do some meeting and conferring over a  
3 reasonably brief period of time to result in a notice of  
4 presentment of a revised procedural order that then anyone who  
5 still is objecting to that can submit a written objection to,  
6 and I'll consider it.

7 I think that is the best undertaking I can make at  
8 this point, and it will also give me an opportunity to reflect  
9 on everything that has been said today.

10 Let us go on. I think everything else that was on the  
11 agenda was listed as adjourned to the March omnibus hearing. I  
12 don't believe there is anything else that we have to take up by  
13 way of discussion today.

14 The next scheduled hearing date is the March 13, 2019,  
15 omni, which will take place in San Juan with a video connection  
16 to New York.

17 I want to thank the court staff here in New York and  
18 in Puerto Rico and in Boston for their consistent excellent  
19 work in preparing for, conducting, and supporting the hearings,  
20 and the administration of these very, very complex cases.

21 I thank everyone who has made submissions and spoken  
22 today in connection with the matters that are on the calendar.  
23 As always, they are very helpful to me, and I will endeavor to  
24 be clear in my response to the matter that is submitted to me.

25 With that, keep well, safe travels to all, and thank

1 you to the examiner, to Mr. Wilson and Ms. Stadler, for their  
2 continuing work both in front of and behind the scenes.

3 Take care, everyone.

4 (Adjourned)

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UNITED STATES DISTRICT COURT)  
                                     ) ss.  
OF PUERTO RICO                )

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REPORTERS' CERTIFICATE

7

We, Lisa Franko and Alena Lynch, do hereby certify  
that the above and foregoing, consisting of the preceding 74  
pages, constitutes a true and accurate transcript of my  
stenographic notes and is a full, true and complete transcript  
of the proceedings to the best of our ability.

Dated this 30th day of January, 2019.

S/Lisa Franko\_\_\_\_\_

Lisa Franko, RMR, CSR, RPR, CRR

S/Alena Lynch\_\_\_\_\_

Alena Lynch, RMR, CSR, RPR, CRR

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